EME COURT U.S.

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JOHN F. DAVIS, CLERK

in the Supreme Court of the United States

OCTOBER TERM 1969

No. 574

UNITED BONDING INSURANCE COMPANY,
Petitioner,

vs.

DEVELOPMENT CORPORATION OF AMERICA INC.,
Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

APPENDIX B

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IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

No. 67-50-Civ-TC

DEVELOPMENT CORPORATION OF AMERICA, INC., a Florida corporation,

Plaintiff,

vs.

UNITED BONDING INSURANCE COMPANY, an Indiana corporation,

Defendant

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause came before the Court for trial pursuant to notice.

Prior to trial there was filed in this cause a Pre-Trial Stipulation and, upon the Pre-Trial Conference having been had, this Court entered its own Order on Pre-Trial Conference, which Order was filed May 28, 1968, directing the parties to meet in an attempt to arrive at further stipulations. Although requested and directed to do so by the Court, the parties were unable to arrive at any further stipulations so as to agree on all uncontested matters as originally directed by the Court's Order for Pre-Trial Conference. This inability to agree was made manifestly apparent at the trial with the position of the Defendant that the Defendant would put the Plaintiff to strict proof of the Plaintiff's claim. With this, the trial commenced and after the Court had overruled certain objections of the Defendant to proof and documentary evidence, the Defendant requested a recess and after the recess the parties stipulated to the entry of a final judgment without, however, waiving the Defendant's right to appeal as to any prior ruling of this Court.

Whereupon, the Court now makes the following

FINDINGS OF FACT

1. Plaintiff, DEVELOPMENT CORPORATION OF AMERICA, INC., is a Florida corporation with its principal place of business in the City of Hollywood, State of Florida.

2. Defendant, UNITED BONDING INSURANCE COMPANY, is an Indiana corporation, with its principal place of business in the City of Indianapolis, State of Indiana.

3. In 1964 DEVELOPMENT CORPORATION OF AMERICA, INC. became the general contractor for the construction of the Hollywood Towers Apartments, Hollywood, Florida, which construction was to be in accordance with the Plans and Specifications prepared by Charles F. McKirran & Associates.

4. DEVELOPMENT CORPORATION OF AMERICA, INC. negotiated with and awarded the furnishing and installation of the electrical work in the Hollywood Towers to INTERNATIONAL ELECTRICAL CONTRACTORS, INC. and in August 1964 gave written notice of this intention to INTERNATIONAL ELECTRICAL CONTRACTORS, INC., provided that INTERNATIONAL ELECTRICAL CONTRACTORS, INC. delivered a performance bond for the work.

5. A form contract for the electrical work between DEVELOPMENT CORPORATION OF AMERICA, INC. and INTERNATIONAL ELECTRICAL CONTRACTORS, INC. was prepared but not signed by either DEVELOPMENT CORPORATION OF AMERICA, INC. or INTERNATIONAL ELECTRICAL CONTRACTORS, INC. and thereafter INTERNATIONAL ELECTRICAL CONTRACTORS, INC. delivered to DEVELOPMENT CORPORATION OF AMERICA, INC. Bond No. CB-2563 of UNITED BONDING INSURANCE COMPANY, which was entered into by UNITED BONDING INSURANCE COMPANY on September 1, 1964, for which bond UNITED BONDING INSURANCE COMPANY received a premium, which premium has never been returned or repaid.

6. INTERNATIONAL ELECTRICAL CONTRACTORS, INC. commenced the performance of the electrical work but subsequently defaulted in January 1965. Upon the default of INTERNATIONAL ELECTRICAL CONTRACTORS, INC., DEVELOPMENT CORPORATION OF AMERICA, INC. immediately notified UNITED BONDING INSURANCE COMPANY of the default and with the consent of UNITED BONDING INSURANCE COMPANY, DEVELOPMENT CORPORATION OF AMERICA, INC. entered into a funding agreement with INTERNATIONAL ELECTRICAL CONTRACTORS, INC. whereby DEVELOPMENT CORPORATION OF AMERICA, INC. agreed to fund the job for INTERNATIONAL ELECTRICAL CONTRACTORS, INC. Thereafter DEVELOPMENT CORPORATION OF AMERICA, INC. kept UNITED BONDING INSURANCE COMPANY advised of job progress but subsequently in May 1965 UNITED BONDING INSURANCE COMPANY

notified DEVELOPMENT CORPORATION OF AMERICA, INC. that it had no liability under its performance bond. Immediately thereafter INTERNATIONAL ELECTRICAL CONTRACTORS, INC. removed its men and material from the Hollywood Towers job and it became necessary for DEVELOPMENT CORPORATION OF AMERICA, INC. to complete the electrical portion of the work by other means, and as a result of the default of INTERNATIONAL ELECTRICAL CONTRACTORS, INC. and the breach of the bond by UNITED BONDING INSURANCE COMPANY, DEVELOPMENT CORPORATION OF AMERICA, INC. suffered damages in the amount of One Hundred Twenty-five Thousand ($125,000.00) Dollars.

Based upon the foregoing facts and the Stipulation of the parties, this Court now enters its

CONCLUSIONS OF LAW

1. This Court has jurisdiction of this matter under Title 28, *U.S.C.*, §1332.

2. Plaintiff, DEVELOPMENT CORPORATION OF AMERICA, INC., is entitled to a final judgment in its favor and against the Defendant, UNITED BONDING INSURANCE COMPANY, in the amount of ONE HUNDRED TWENTY-FIVE THOUSAND and no/100 ($125,000.00) DOLLARS, which judgment shall forthwith issue.

DONE and ORDERED, at Miami, Florida, this 3rd day of July, 1968.

TED CABOT
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

No. 67-50-Civ-TC

DEVELOPMENT CORPORATION OF AMERICA, INC., a Florida corporation,

Plaintiff,

vs.

UNITED BONDING INSURANCE COMPANY, an Indiana corporation,

Defendant

FINAL JUDGMENT

This Court having heretofore entered its Findings of Fact and Conclusions of Law, it is

ORDERED and ADJUDGED that final judgment be and it hereby is entered in favor of Plaintiff, DEVELOPMENT CORPORATION OF AMERICA, INC., and against Defendant, UNITED BONDING INSURANCE COMPANY, and Plaintiff, DEVELOPMENT CORPORATION OF AMERICA, INC. do have and recover of and from the Defendant, UNITED BONDING INSURANCE COMPANY, the sum of ONE HUNDRED TWENTY-FIVE THOUSAND and no/100 ($125,000.00) DOLLARS, for which sum let execution issue.

DONE and ORDERED, at Miami, Florida, this 3rd day of July, 1968.

TED CABOT
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

No. 67-50-Civ-TC

DEVELOPMENT CORPORATION OF AMERICA, INC., a Florida corporation,

Plaintiff,

vs.

UNITED BONDING INSURANCE COMPANY, an Indiana corporation,

Defendant

ORDER

Pursuant to notice this cause came before the Court upon the Defendant's Motion for New Trial and Motion to Amend the Findings of Fact, and the Court, after having considered the record herein and having heard argument of counsel, it is

ORDERED, that the Defendant's Motion for New Trial be and the same hereby is denied, and it is further

ORDERED, that the Defendant's Motion to Amend the Findings of Fact be and the same hereby is denied as to paragraphs 1 and 2 of the Motion but granted as to paragraphs 3 and 4 of the Motion, and the Findings of Fact be and they hereby are amended as follows:

Paragraph 5 of the Findings of Fact is amended to read as follows:

"5. A form contract for the electrical work between DEVELOPMENT CORPORATION OF AMERICA, INC. and INTERNATIONAL ELECTRICAL CONTRACTORS, INC. was prepared but not signed by either DEVELOPMENT CORPORATION OF AMERICA, INC. or INTERNATIONAL ELECTRICAL CONTRACTORS, INC. and thereafter INTERNATIONAL ELECTRICAL CONTRACTORS, INC. delivered to DEVELOPMENT CORPORATION OF AMERICA, INC. Bond No. CB-2563 of UNITED BONDING INSURANCE COMPANY, which was entered into by UNITED BONDING INSURANCE COMPANY on September 1, 1964, for which bond UNITED BONDING INSURANCE COMPANY received a premium, which premium has never been returned or repaid but was placed in escrow as a setoff against the sums due UNITED BONDING INSURANCE COMPANY by INTERNATIONAL ELECTRICAL CONTRACTORS, INC."

Paragraph 6 of the Findings of Fact is amended to read as follows:

"6. INTERNATIONAL ELECTRICAL CONTRACTORS, INC. commenced the performance of the electrical work but subsequently defaulted in January 1965. Upon the default of INTERNATIONAL ELECTRICAL CONTRACTORS,

INC., DEVELOPMENT CORPORATION OF AMERICA, INC. immediately notified UNITED BONDING INSURANCE COMPANY of the default and with the consent of UNITED BONDING INSURANCE COMPANY, DEVELOPMENT CORPORATION OF AMERICA, INC. entered into a funding agreement with INTERNATIONAL ELECTRICAL CONTRACTORS, INC. whereby DEVELOPMENT CORPORATION OF AMERICA, INC. agreed to fund the job for INTERNATIONAL ELECTRICAL CONTRACTORS, INC. In May 1965 UNITED BONDING INSURANCE COMPANY notified DEVELOPMENT CORPORATION OF AMERICA, INC. that it had no liability under its performance bond. Immediately thereafter INTERNATIONAL ELECTRICAL CONTRACTORS, INC. removed its men and material from the Hollywood Towers job and it became necessary for DEVELOPMENT CORPORATION OF AMERICA, INC. to complete the electrical portion of the work by other means, and as a result of the default of INTERNATIONAL ELECTRICAL CONTRACTORS, INC. and the breach of the bond by UNITED BONDING INSURANCE COMPANY, DEVELOPMENT CORPORATION OF AMERICA, INC. suffered damages in the amount of One Hundred Twenty-five Thousand ($125,000.00) Dollars."

DONE and ORDERED, at Miami, Florida, this 10 day of September, 1968.

TED CABOT
United States District Judge

CERTIFICATE OF SERVICE

I, ERIK J. BLOMQVIST, JR., one of the attorneys for UNITED BONDING INSURANCE COMPANY, Petitioner herein and a member of the Bar of the Supreme Court of the United States hereby certify that on the 24 day of September, 1969, I served a copy of the foregoing Appendix B on DONALD S. ROSENBERG, of Rosenberg, Rosenberg, Reisman & Glass, attorneys for Respondent, DEVELOPMENT CORPORATION OF AMERICA, by mailing a copy in a duly addressed envelope, with first class postage prepaid to DONALD S. ROSENBERG, 1002 Ainsley Building, Miami, Florida 33132.

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